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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

No. 23 and 24

CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER A TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

REPLY BRIEF FOR PETITIONER.

SILAS H. STRAWN,
FRANK H. TOWNER,
CHARLES J. CALDERINI,
GEORGE W. OTT,
Attorneys for Petitioner.

THE BLAKELY-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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Supreme Court of the United States

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Petitioner,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

Respondent.

REPLY BRIEF FOR PETITIONER.

MAY IT PLEASE THE COURT:

The brief filed herein on behalf of respondent requires some answer, as it appears to be based upon a misconception of the law and of the position of petitioner. In replying to that brief, we shall follow the order in which argument has been presented.

A. *The Effect of the Bankruptcy Act.*

At pages 7 to 13 of its brief, respondent argues that the Bankruptcy Act, being a proper exercise of power by the Congress, is the law of each state as well as of the United

States, and that all state statutes in conflict therewith are void. This proposition of law is undoubtedly correct, and has been asserted by this Court in so many cases that it is unnecessary to cite authority therefor. This is not to say, however, that all state statutes relating to the subject are automatically repealed or annulled by virtue of the existence of the Bankruptcy Act. On the contrary, the very cases cited by respondent demonstrate that state laws on the subject of insolvency and liquidation and distribution of assets can exist and be applied, notwithstanding the existence of the Bankruptcy Act.

In the *Stellwagen case,* 245 U. S. 605 (page 8, respondent's brief), this Court specifically held that certain Ohio statutes, being consistent with the Bankruptcy Act, were not voided by it. In reaching that conclusion, this Court held that state laws in conflict with the Bankruptcy Act were suspended, but added at page 613:

> "While this is true, state laws are thus suspended only to the extent of actual conflict with the system provided by the Bankruptcy Act of Congress (citing cases)."

Thus, the question for determination here is not whether the Bankruptcy Act has application notwithstanding conflicting provisions of state law, but whether the law of Illinois relating to the dissolution of Illinois corporations is in conflict with the Bankruptcy Act. We submit that there certainly is no such conflict. As pointed out, at pages 24 to 28 of our main brief, the Illinois statute under which respondent was dissolved was not a bankruptcy act or an insolvency act, and did not pertain in any way or to any extent to the subject of a corporation's inability to pay its debts or to the liquidation and sale of its assets for the benefit of creditors. It was nothing more than a rule prescribed by the State of Illinois, in the proper exercise of its power, for dealing with Illinois corporations which had

failed to comply with the rules and regulations prescribed by the State for their conduct.

The theory of respondent is apparently expressed in the statement on page 9 of its brief that

> "When the legislature of Illinois declared that the dissolution of Illinois corporations, when creditors were affected, should not impair the rights of those creditors within two years, it was enacting a statute of limitations within which the rights of such creditors should be asserted."

Certainly this is not the case. The Illinois statute in question was in no sense a limitation statute. It did not deal with an existing right of a dissolved corporation to sue or be sued. The statute created those rights, since prior to statutory enactment, dissolution of an Illinois corporation completely terminated its existence and thereafter it could neither sue nor be sued. (*City Insurance Co.* v. *Commercial Bank*, 68 Ill. 348, 350, and other authorities cited in petitioner's main brief at page 14.) The effect of the provision referred to in the above quotation from respondent's brief was only that a dissolution under the State statute should not affect a remedy against a dissolved corporation for liabilities incurred prior to dissolution, if suit therefor was brought and service had within two years thereafter. Clearly, the State had the right to insist upon some finality in the dissolution of corporations created by it.

In this case, during that two years following respondent's dissolution, the mortgage foreclosure proceedings were pending in the State Court, as was also the mechanic's lien foreclosure (R. 70-72). It must be assumed that had there been any benefit to respondent in the filing of a petition under Section 77B, it would have been filed during that two year period, which was certainly ample for the purpose.

Section 77B of the Bankruptcy Act, while authorizing an administration of a corporate debtor's property, does not undertake to create such a debtor. It assumes the existence

of a corporate debtor competent to act. But to determine whether there is such a corporation, recourse must be had to State law and action thereunder. In this case, it is clear that under the law of Illinois, respondent was not such a corporation.

The defect in the reasoning of respondent probably lies in the assumption of the Court of Appeals' that the dissolution of an insolvent corporation, by a State under State laws, defeats or impairs the jurisdiction of courts of bankruptcy over insolvent estates. It is incorrect to say, as does the opinion, that bankruptcy jurisdiction over the estates of insolvent persons "comes into existence" • • • "simultaneously with the coming into existence of the insolvency of the debtor." (R. 111). Although insolvency may be a requisite of bankruptcy jurisdiction in all cases, jurisdiction over an insolvent cannot attach until a bankruptcy petition has been filed in conformity with the provisions of the Bankruptcy Act.

State statutes affecting the bankruptcy power and the operation of the Bankruptcy Act much more directly than the Illinois statute relating to the dissolution of corporations, which affects it not at all, have been sustained. Thus, in *Mayer* v. *Hellman*, 91 U. S. 496, it was argued that the then Bankruptcy Act suspended the operation of an Ohio statute relating to the administration of assignments for the benefit of creditors, the claim being that the Ohio statute was an insolvency law. This Court rejected the claim, saying at page 502:

> "The answer is that the statute of Ohio is not an insolvency law in any proper sense of the term."

This court then pointed out that the Ohio law involved did not require assignments; did not discharge the insolvent from arrest or imprisonment; and did not release his after-acquired property from liability to creditors. The rule of the case cited is applicable in the case at bar, for

the Illinois statute under which respondent was dissolved did not even have a surface application to bankruptcy or insolvency, and its application did not depend upon any ability or disability of respondent to pay its debts.

There being no possible theory upon which the Illinois statute relating to the dissolution of corporations could be said to conflict with the Bankruptcy Act, the argument of respondent fails. That argument may be based upon the misconception of petitioner's position, as stated at page 10 of respondent's brief. It is there said that as our argument is understood, a Federal court would be ousted of bankruptcy jurisdiction if, during the pendency of a bankrupt proceeding, the bankrupt corporation was dissolved.

That is not our position or our argument. Obviously, if bankruptcy jurisdiction has attached in a proper case, that jurisdiction could not be defeated by a subsequent dissolution of the bankrupt corporation. Many conditions could be assumed under which a dissolved corporation might be subject to bankruptcy jurisdiction, and these conditions have obtained in cases dealing with the subject. But there is no profit in pursuing these possibilities in the case at bar, for in this case it is undisputed that bankruptcy jurisdiction did not attach while respondent was an existing corporation and that no effort was made to have it attach during that period in which, under Illinois statute, respondent had the existence which the Bankruptcy Act requires.

Respondent concludes its argument on this point by saying (pp. 12, 13; respondent's brief) that regardless of State law, a dissolved corporation continues subject to the Bankruptcy Act until its property has been distributed among those entitled thereto. We submit that this is not so. Conceding the supremacy of the Bankruptcy Act in all matters relating to bankruptcy, we still submit that the statute of Illinois relating to the dissolution of Illinois corporations,

and not relating to the subject of bankruptcy or insolvency, must be given full effect.

B. *The Situation of Stockholders.*

At pages 13 and 14 of its brief, respondent has urged the rights of the alleged stockholders in respondent and their right to relief under Section 77B of the Bankruptcy Act. Even if we grant the rights of stockholders in a corporation to relief under that law, it is still true that they must hold stock in a corporation qualified to file a petition under Section 77B, which respondent is not and has not been for two years.

And as a matter of equity, no injustice could be done the present stockholders of respondent. They did not acquire their stock of respondent until May, 1935 (R. 23) four years after respondent had been dissolved and the foreclosure suits started (R. 71, 72). The only property of respondent was the building at 4136 Wilcox Avenue, Chicago, and it was the only property which respondent was authorized to own and operate during its existence as a corporation. So far as the record shows, there were no creditors of respondent other than the mechanics lien claimants and the holders of bonds and notes issued and assumed by respondent.

If the foreclosure proceedings pending in the State courts of Illinois were allowed to proceed to a conclusion, the only property of respondent would be sold to pay its admitted debts, and if there was a surplus it would pass to the stockholders of respondent. Thus, those stockholders, if they really are such, will receive everything to which they are entitled in any case. If they receive more than the residue left after the satisfaction of the debts which respondent concededly owes, they can only do this at the expense of respondents' creditors. Section 77B of the Bankruptcy act does not contemplate any such result, and was not enacted

in order that stockholders of a corporation might profit at the expense of the corporation's creditors.

C. *The Decided Cases.*

In our main brief (pp. 28-35), we made some reference to other cases which dealt with variations of the point here in issue. Respondent has devoted pages 14 to 28 of its brief to a rather lengthy discussion of these cases, and this discussion requires a brief answer; principally for the reason that the essential point of each decision has not been stated.

In the *Capital Endowment Company* case, 86 Fed. (2d) 976, the decision of the court was expressly based upon the statement (p. 979) that the debtor had substantial assets other than those with respect to which it had been ousted; that its ouster from its corporate franchises in Ohio did not destroy its property or its title thereto; and that it had a continuing right to deal with that property. This was a condition which did not exist in the case at bar, as respondent's rights subsequent to its dissolution were limited to the defense or prosecution of litigation instituted prior thereto.

In the *Old Fort Improvement Company case,* 89 Fed. (2d) 286, the decision of the court was expressly based upon the fact that under state statute, the corporation had the right to file the petition. The court said at page 289:

> "But as we have seen, the statutes of South Carolina provide that a corporation of that state whose charter has been cancelled shall be continued as a body corporate for the purpose of prosecuting or defending suits by or against it but not for the purpose of continuing the business for which it was established."

In *In re* 211 *East Delaware Place Building,* 76 Fed. (2d) 834, the opinion was written by Circuit Judge Evans. As we have pointed out in our main brief the decision on its

face is not authority for the statement of the Court of Appeals in the case at bar that the settled law of this Circuit is contrary to our contention. Moreover, the same Judge Evans, in thereafter passing upon the same case at 14 Fed. Supp. 96, specifically stated at page 100 that his prior decision in the Court of Appeals was to the effect that the forfeiture of the charter of the corporation did not prevent creditors from proceeding against the debtor in bankruptcy; and that the lack of corporate existence might have the effect of rendering the corporation unable to file a voluntary petition.

Regardless of whether or not the statements of Judge Evans in the District Court case were dictum, as claimed by respondent (p. 27, respondent's brief), there can be no denial of the effect of Judge Evans' statement in the District Court as to what he actually decided in the prior decision in the Court of Appeals.

In *In re Surf Building Corporation*, 11 Fed. Supp. 295, the petition was filed by creditors, and it does not appear that that petition was not filed within two years after the corporation had been dissolved under the state statute. If it was so dissolved, the decision is not an authority against our position. Moreover, the opinion in the case was by Judge Lindley, who wrote the opinion in the case at bar and attributed to the decision of the Court of Appeals in the *Delaware Place Building Corporation case, supra*, an effect which the writer of that opinion has said should not be given it.

In the *Hammond case*, 59 Fed. (2d) 952, the corporation was dissolved on October 1, 1931, and the bankruptcy petition was filed by creditors on November 28, 1931. The petition charged an act of bankruptcy within four months next preceding the date of the filing of the petition. In addition, the Maryland statute under which receivers had been ap-

pointed for the property of the corporation involved was an insolvency statute. The issue in that case was quite different from that in the case at bar, as is shown by the court in its statement at page 595:

> "No discussion is needed to show the far reaching effect on the present system of a holding that would permit any insolvent corporation, after committing an act of bankruptcy, to oust the jurisdiction of the Federal Court by securing a decree of dissolution from the state under a statute similar to that in Maryland."

In *In re Booth's Drug Store, Inc.*, 19 Fed. Supp. 95, the West Virginia law under which the corporation had been dissolved expressly provided for the continuance of its corporate powers for a period not in excess of three years for the purpose of prosecuting or defending suits, settling up the business and disposing of the property and dividing the capital. The charter of the corporation was annulled on May 31, 1935, and the involuntary petition in bankruptcy was filed by creditors on January 19, 1937, alleging an act of bankruptcy within the four months next preceding. The action of the court was in strict conformity with the state statute defining the rights and obligations of the corporation.

In the *White Mountain Paper Company case*, 127 Fed. 643, the New Jersey statute quoted at page 645 specifically provided that a dissolved corporation should be continued as a body corporate for the purpose of prosecuting and defending suits and closing up their affairs. The court held that this statute was sufficient to permit the adjudication of the company upon the involuntary petition which had been filed.

In the *Cresson & Clearfield Company* case, 148 Fed. 981, the objection to a petition in bankruptcy filed by a creditor was that the sale of the company's property under a writ authorized by Pennsylvania statute constituted a dissolu-

tion of the corporation prior to the filing of the petition. The sale was held in September, 1905, and the petition was filed in December, 1905, alleging the sale as an act of bankruptcy within the preceding four months. The court necessarily held that an act of bankruptcy could not itself operate to defeat the application of the bankruptcy law, and also held (page 984) that the Pennsylvania statute with respect to the dissolution of a corporation did not prevent the extension of its corporate franchises for the purpose of winding up its affairs.

In *In re Thomas,* 78 Fed. (2d) 602, an involuntary petition in bankruptcy was filed by creditors within four months after the commission of acts of bankruptcy. The court held (page 603) that the Michigan decisions did not establish the proposition that the entry of a decree of dissolution upon the petition of the company caused the company to cease to exist for all purposes.

The *Munger Vehicle Tire Company* case, 159 Fed. 901, is fully discussed at pages 32 and 33 of our main brief. In that case the court held that under the New Jersey statutes, as construed by the highest court of New Jersey, a dissolved corporation had an existence subsequent to dissolution sufficient to permit its adjudication as a bankrupt on an involuntary petition.

In the *American & British Manufacturing Corporation* case, 300 Fed. 839, there was no issue as to the effect of the dissolution of a corporation against which, or on behalf of which an adjudication in bankruptcy was sought. It was only held that the existence of an equity receivership did not prevent the operation of the Bankruptcy Act.

It will be observed that in all these cases the facts differentiate them from the case at bar. In all but one of them, the adjudication in bankruptcy was had upon an involuntary petition filed by creditors. In many of them, the

petition was based upon an act of bankruptcy committed within four months prior thereto, and in some, the Bankruptcy Act was held to supersede a State insolvency statute. In the case at bar, no bankruptcy petition has been filed by creditors, no act of bankruptcy has been committed by respondent, and no State insolvency law is involved. The essential fact is that in all of the cases cited full effect was given to the State statutes under which the corporation involved was organized and its existence terminated. The case at bar is the only case, so far as we know, in which such a State statute is set completely aside and held in effect to be ineffective and of no force.

As we have indicated, it may be that had the facts been different in the case at bar, an adjudication of respondent as a bankrupt would have been proper. Thus, if respondent was being liquidated under a State statute; or had respondent filed its petition within the two years following its dissolution; or had it committed an act of bankruptcy during that period and this act of bankruptcy had been followed by the filing of an involuntary petition within four months thereafter, the conclusion to be reached in this case might be different. But it is profitless to speculate on these possibilities, for none of these things are true in the case at bar. The cases cited support our argument, for in all of them the action taken was in conformity with the State statute fixing the rights and status of the corporation involved.

The only two decisions on the precise point here involved are those in the case at bar and in the *Vassar Foundry Company case,* 293 Fed. 248; 2 Fed. (2d) 240. The rule laid down the *Vassar Foundry Case* was not overruled by the *Thomas case,* 78 Fed. (2d) 602, or the *Capital Endowment Company case,* 86 Fed. (2d) 976, and there is no suggestion in the opinions in those cases to that effect. Nor did the decision in the *Vassar Foundry Company case,*

supra, turn on the solvency of the company. In the District Court (293 Fed. 248) the question was stated as follows (p. 249):

> "Under the undisputed facts, the meritorious question presented is whether, after the entry of a decree of dissolution of a Michigan corporation in voluntary dissolution proceedings regularly had under the applicable Michigan statutes, such corporation may, more than four months thereafter and on its own petition, be adjudicated a bankrupt under the Bankruptcy Act."

In the Court of Appeals (2 Fed. (2d) 240) the solvency of the corporation was only considered on the question of whether the Michigan statute under which the company was dissolved was an insolvency statute. The court pointed out (p. 240) that if the Company had alleged insolvency as a cause for dissolution under the State statute, that might have been an act of bankruptcy which would have permitted its adjudication as a bankrupt.

D. The Rights of Respondent as a Dissolved Corporation Under the Law of Illinois.

At pages 28 to 32 of its brief, respondent argues that it had a qualified existence under the Illinois statute subsequent to its dissolution by decree of the Illinois court, and apparently concludes that this qualified existence authorized it to file the petition here involved. This subject was dealt with at pages 10 to 20 of our main brief. Respondent refers to the *Hutchinson* case, 176 Ill. 48, and to the *Facett* case, 102 Ill. 315, but concedes (page 29) that these cases were decided under an Illinois statute antedating that under which respondent was dissolved. As we pointed out in our main brief (pages 17, 18) the State statute then in effect did not limit to two years the time in which suits could be brought against a dissolved Illinois corporation, and the decisions therefore permitted no more than was permitted by statute.

In the *Mallers* case, 242 Ill. 50, the action as stated by the court at page 53, was commenced while the corporation was a going corporation, and for this reason the court held that it should be permitted to prosecute its suit to final judgment. Such action was not inconsistent with the then existing statute. Nor as a matter of fact would it be inconsistent with the present statute, for it is conceded that respondent now has the right to continue its defense of the foreclosure suits pending in the state court.

In the *Perry* case, 279 Ill. App. 195 (page 31, respondent's brief) the only question was of the right of an Ohio corporation to sue or be sued in Illinois subsequent to its dissolution. The court only held that the rights of the corporation should be determined by the law of the state of its creation, and that since the Ohio law fixed no time limit within which a dissolved Ohio corporation could sue or be sued, that rule would be applied in Illinois. In the *Griggsville State Bank* case, 275 Ill. App. 11 (page 31, respondent's brief) it did not appear that the time in which the dissolved corporation could sue or be sued under Illinois law had expired. All the court held was (page 15) that the suggestion of a corporation's dissolution did not raise a presumption that the time in which it could be sued had expired. The decision in the *American Bank & Trust Co.* case, 48 Fed. 2d 588, did no more than apply the rule laid down in the cases to which reference has been made.

Respondent's theory apparently is that although the Illinois statute fixing the rights of respondent subsequent to dissolution was plain and explicit, there should nevertheless be grafted on to the statute additional language authorizing respondent to take the action undertaken in this case. This cannot be done, as the statute is plain in providing that dissolved corporations shall continue their corporate capacity for two years only, for the sole purpose

of collecting their debts and selling and conveying their property and effects. It is conceded by respondent (p. 32, respondent's brief) that it had only a qualified existence under Illinois law, but it is said that a public policy has been adopted which permits corporations to continue their existence after dissolution for the purpose of winding up their affairs, satisfying creditors and distributing assets.

But the public policy of the State of Illinois is set out in the statutes enacted by its General Assembly. In this case, the applicable statute is plain and requires no construction; and all decisions which have been made under it and previous statutes dealing with the same subject, do no more than apply the law as written. Under these circumstances, it is not necessary to go beyond the statute to determine the public policy of the state.

In connection with its argument on this point, respondent says at page 31 of its brief:

> "The petitioner claims that its rights and respondent's rights in the instant suit are not reciprocal. The petitioner agrees that creditors could file an involuntary petition against the respondent, but denies the right of the respondent to file such an involuntary petition."

This is an incorrect statement of petitioner's position. During the two years next following respondent's dissolution, the rights of respondent and petitioner were reciprocal. During that time the mortgage foreclosure suits were started, and during that time respondent probably had a corporate right to file a petition under Section 77B of the Bankruptcy Act. But respondent filed no such petition. Lack of reciprocity does not result from a failure to extend to respondent an unlimited never-ending right to file such a petition when such rights as petitioner has asserted and now asserts were first asserted in strict compliance with that statute. Also, petitioner does not admit

that creditors of respondent could now file an involuntary petition against it, or that they could ever have done so at any time after the expiration of the two years following respondent's dissolution. It is unnecessary, however, to argue this proposition, as no such petition was filed by creditors of respondent at any time.

E. *The Status of Petitioner.*

Respondent claims, at pages 33 and 34 of its brief, that petitioner had no standing to challenge the jurisdiction of the District Court, on the ground that Section 77B (a) of the Bankruptcy Act limits that right to three or more creditors. The claim is without merit. Section 77B (a) does give three or more creditors of the debtor the right to "appear and controvert the facts alleged in the petition or answer;" but that sub-section does not purport to deprive the court of the power to hear any interested persons on such issues as may be presented, and particularly on an issue raised as to its own jurisdiction. No objection was made by respondent in the District Court to the right of petitioner to challenge the court's jurisdiction, and no motion was made in the Circuit Court of Appeals to dismiss the appeals. It is now too late to raise the question.

But, independently of this consideration, the jurisdictional issue was appropriately raised by petitioner. Petitioner did not file a petition for leave to intervene, as was done in *In re* 1030 *North Dearborn Building Corp.*, 7 Fed. Supp. 896, cited by respondent (p. 33 respondent's brief). On the contrary, petitioner was brought into the bankruptcy court by a formal notice, served upon its counsel by counsel for respondent (R. 6), that respondent would ask that court to approve its petition for reorganization, to issue its order restraining further prosecution of the

State court foreclosure suit, and to appoint the debtor to take possession of the property then in the custody of the State court through its receiver appointed in the mortgage foreclosure proceedings.

Petitioner appeared in response to this notice, and the court entered an order directing all parties in interest to answer the petition of respondent for reorganization and referred the matter to a Special Master (R. 9) on the petition and answers. Pursuant to this order, petitioner filed its answer, in which it denied that respondent was a corporation or that the petition was filed in good faith, and set up the dissolution of respondent under State statute in 1931 (R. 9, 13). It was on the issues thus raised that the Special Master took evidence and made his report to the District Court (R. 70-75), and that court entered the orders appealed from. No point is raised by respondent as to the appealability of these orders, and in view of the allowance of the appeals by both the District Court and the Court of Appeals, no such question could be raised.

Petitioner, through the receiver in the State court proceedings, was in possession of the premises and was entitled to remain in possession as the owner thereof, and to prosecute its foreclosure proceedings. *Rohrer* v. *Deatherage,* 336 Ill. 450, 455; *Duparquet* v. *Evans,* 297 U. S. 216. It was the duty of petitioner to protect and preserve these rights for the benefit of the bondholders. In the performance of this duty, petitioner denied the authority of the District Court to interfere with these rights by taking possession of the premises through its trustee and by restraining the prosecution of the foreclosure proceedings.

If the District Court was without jurisdiction to make and enter the decrees complained of, as we contend it was, the injury to petitioner is obvious, and this injury conferred upon it the right of appeal. *Pianta* v. *H. M. Reich*

Co., 77 F. (2d) 888, (C. C. A. 2d Cir.); *In Re Roche*, 101 Fed. 956 (C. C. A. 5th Cir.); *Humphrey* v. *Bankers Mortgage Co.*, 79 F. (2d) 345, (C. C. A. 10th Cir.). On this point see also *Continental Bank* v. *Rock Island Railway*, 294 U. S. 648; *Harrison* v. *Chamberlain*, 271 U. S. 191; *Harris* v. *First National Bank*, 216 U. S. 382; *McGonigle* v. *Foutch*, 51 F. (2d) 455.

The question of the power of a court to exercise control over persons and property is fundamental and may be raised at any time, and if not raised by the parties should and will be raised by the court itself. *M. C. & L. M. Railway Co.* v. *Swan*, 111 U. S. 379; *Morris* v. *Gilmer*, 129 U. S. 315; *Defiance Water Co.* v. *Defiance*, 191 U. S. 184; *In Re Garneau*, 127 Fed. 677; *In Re Ettinger*, 76 Fed. (2d) 741 (C .C. A. 2nd Cir.). Decrees of a court acting without jurisdiction can be attacked collaterally, *Vollely* v. *Northern Fire Ins. Co.*, 254 U. S. 348; *Thompson* v. *Whitman*, 18 Wall 457; *German Savings Society* v. *Dormitzer*, 192 U. S. 125; *National Exchange Bank* v. *Wiley*, 195 U. S. 257; and it would be a strange doctrine if a person adversely affected cannot attack such a decree by direct proceedings.

There is no merit in the contention that petitioner is not a creditor. Petitioner is entitled to compensation for its services and the services of its attorneys in the institution and prosecution of foreclosure proceedings, as well as reimbursement for its expenses and costs of suit (R. 5, 14, 15). Under Section 77B (b) of the Bankruptcy Act which defines creditors as "including all holders of claims of whatever character against the debtor or its property", petitioner is a creditor of the respondent.

F. *Did Respondent have a Property Interest Capable of Reorganization in Bankruptcy?*

The argument presented on this point by respondent, at pages 35 to 39 of its brief, proceeds upon the assumption that respondent had corporate capacity to acquire the Master's certificate issued in the mechanics lien proceeding. As we pointed out at pages 35 to 40 of our brief, respondent did not have this capacity after the expiration of two years following its dissolution.

In the *Argyle Lake Shore Building Corporation Case,* 74 Fed. (2d) 491, it was conceded that a corporate right of redemption existed after the sale of the property for taxes. In the case at bar, however, the certificate in the mechanics lien proceeding was issued on August 5, 1931. Respondent's right of redemption therefrom expired twelve months thereafter, or on August 5, 1932 (see Appendix, pp. 41, 42, our main brief). Consequently, at the time respondent assumed to purchase the certificate, the period within which there could be any redemption thereof had expired. Upon analogous facts, the Court of Appeals for the Seventh Circuit in *In re Lowmon,* 79 Fed. (2d) 887, held that the expiration of a redemption period extinguished all property rights.

It is true that if it be assumed respondent had the corporate power to make this purchase, it would then have had a statutory right of redemption under any decree entered in the foreclosure proceedings pending in the State court, and this right of redemption might constitute property susceptible of reorganization under the Bankruptcy Act. If, however, respondent had no corporate capacity to purchase the Master's certificate issued in the mechanics lien proceeding, a deed issued under that certificate would have terminated all of respondent's interest in the

property. Any right of redemption under a decree in the mortgage foreclosure cases would have passed to the stockholders of respondent.

The argument of respondent on this point thus assumes in respondent a power of corporate action, which, as we have shown, did not exist under the law of Illinois. Unless that power is shown to exist, the argument of respondent on this point fails completely.

Conclusion.

We submit that respondent has supplied nothing to this Court justifying an affirmance of the decision of the Court of Appeals. No argument or authority has been furnished justifying the action taken by the District Court, the necessary effect of which action is to deprive petitioner and the security holders represented by it of their rights, and to deprive the State of Illinois of authority to deal with and control corporations of its own creation. We submit that there is nothing in the law justifying these results and that the judgment of the lower court should be reversed.

Respectfully submitted,

Silas H. Strawn,
Frank H. Towner,
Charles J. Calderini,
George W. Ott,
Attorneys for petitioner.